

1 MICHAEL D. YOUNG (SBN 120787)  
2 NICOLE C. RIVAS (SBN 179337)  
3 **ALSTON & BIRD LLP**  
4 333 South Hope Street, Sixteenth Floor  
5 Los Angeles, California 90071  
6 Telephone: (213) 576-1000  
7 Facsimile: (213) 576-1100  
8 Email: mike.young@alston.com  
9 nicole.rivas@alston.com

10 Attorneys for Defendant THE BOARD OF TRUSTEES  
11 OF THE UNIVERSITY OF ILLINOIS, erroneously sued as  
12 THE UNIVERSITY OF ILLINOIS-URBANA CHAMPAIGN

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

15 ST. LUKE SCHOOL OF MEDICINE;  
16 DR. JERROLL B.R. DOLPHIN and  
17 DR. ROBERT FARMER on behalf of  
18 himself and all others similarly situated, as  
19 applicable,

20 Plaintiffs,

21 v.

22 REPUBLIC OF LIBERIA; MINISTRY OF  
23 HEALTH, a Liberian Governmental  
24 Agency; MINISTRY OF EDUCATION, a  
25 Liberian Governmental Agency; LIBERIAN  
26 MEDICAL BOARD, a Liberian  
27 Governmental Agency; NATIONAL  
28 COMMISSION ON HIGHER  
EDUCATION, a Liberian Governmental  
Agency; NATIONAL TRANSITIONAL  
LEGISLATIVE ASSEMBLY, a Liberian  
Governmental Agency; DR. ISAAC  
ROLAND; MOHAMMED SHERIFF; DR.  
BENSON BARH; DR. GEORGE GOLLIN;  
EDUCATION COMMISSION FOR  
FOREIGN MEDICAL GRADUATES; a  
Pennsylvania Non-Profit organization;  
FOUNDATION FOR ADVANCEMENT  
OF INTERNATIONAL EDUCATION  
AND RESEARCH; a Pennsylvania Non-  
Profit organization; UNIVERSITY OF  
ILLINOIS-URBANA CHAMPAIGN, an  
Illinois Institution of Higher Learning;  
STATE OF OREGON, Office of Degree  
Authorization,

Defendants.

Case No.: 10-CV-01791 RGK (SHx)

[Honorable R. Gary Klausner]

**DECLARATION OF MICHAEL D.  
YOUNG IN SUPPORT OF  
DEFENDANTS DR. GEORGE  
GOLLIN'S AND THE BOARD OF  
TRUSTEES OF THE UNIVERSITY  
OF ILLINOIS' MOTION FOR  
SANCTIONS PURSUANT TO 28  
U.S.C. § 1927 AND THIS COURT'S  
INHERENT POWERS**

**[FILED CONCURRENTLY WITH  
DEFENDANTS DR. GEORGE  
GOLLIN'S AND THE BOARD OF  
TRUSTEES OF THE UNIVERSITY  
OF ILLINOIS' NOTICE OF  
MOTION AND MOTION FOR  
SANCTIONS AGAINST THADDEUS  
J. CULPEPPER AND JERROLL B.R.  
DOLPHIN PURSUANT TO 28 U.S.C.  
§ 1927 AND THIS COURT'S  
INHERENT POWERS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; AND [PROPOSED]  
ORDER]**

DATE: September 13, 2010  
TIME: 9:00 a.m.  
COURTROOM: 850

**DECLARATION OF MICHAEL D. YOUNG**

I, Michael D. Young, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and am a partner with the law firm of Alston & Bird LLP, attorneys of record for defendants The Board of Trustees of the University of Illinois and Dr. George Gollin, herein. I have personal knowledge of the files and records in this action, and of the facts set forth in this declaration. I could and would competently testify to the matters set forth herein.

2. Upon my review of the Complaint and Amended Complaint in this action, it appeared to me that among the many infirmities with the complaint, both procedurally and legally, there were significant jurisdictional hurdles that I did not think the plaintiffs could overcome. Among them were Eleventh Amendment sovereign immunity issues that appeared to bar the claims against our clients in this action as a matter of law.

3. Because it seemed so inefficient and expensive to have to utilize the court and its resources to address these issues, and in the hopes that we could convince the plaintiff to dismiss the action as to our clients, I telephoned plaintiff's counsel, Thaddeus Culpepper, on or about May 10, 2010, to discuss the case and our concerns with him. In that conversation (which turned out to be the only telephone conversation I was ever able to have with Mr. Culpepper), I notified Mr. Culpepper that his claims were improper in light of the sovereign immunity protection of the Eleventh Amendment to the U.S. Constitution. Telling Mr. Culpepper I would follow up our call with a letter, I asked him in particular to voluntarily dismiss my clients from the action. Attached hereto as **Exhibit A** is a true and correct copy of my confirming email to Mr. Culpepper.

4. On or about May 13, 2010, I sent Mr. Culpepper the promised letter detailing the case law that confirms that this action is inappropriate as against the University of Illinois (at the time, defendant Gollin had not yet been served) in

1 light of its Eleventh Amendment protection. In that letter, I urged Mr. Culpepper to  
2 dismiss the University so that we would not need to file a motion to dismiss. *I also*  
3 *notified him that I thought Rule 11 and other sanctions would be appropriate if he*  
4 *failed to dismiss in light of the uncontroverted authority prohibiting this action*  
5 *against the University.* Attached hereto as **Exhibit B** is a true and correct copy of our  
6 May 13, 2010, letter to Mr. Culpepper, which was delivered both by email and  
7 U.S. Mail.

8           5. I never received a response from Mr. Culpepper. Accordingly, on  
9 May 20, 2010, I telephoned Mr. Culpepper to discuss my letter and our request for a  
10 voluntary dismissal. Mr. Culpepper did not have anyone answering his phone, so I  
11 left him a voicemail message asking him to call me. I followed this up with an email  
12 also requesting that he give me a call or at least indicate whether he would dismiss the  
13 University. Attached hereto as **Exhibit C** is a true and correct copy of my May 20,  
14 2010, email to Mr. Culpepper.

15           6. Because Mr. Culpepper again never returned my phone call or  
16 email, I tried one more time to contact Mr. Culpepper. At my direction, my colleague  
17 Nicole Rivas telephoned Mr. Culpepper on May 26, 2010, but was unable to reach  
18 him. She followed up that call with an email to Mr. Culpepper in which she again  
19 sought a dismissal on sovereign immunity grounds, or alternatively asked for any  
20 authority plaintiff might have to support a claim against an Illinois public University  
21 in federal court here in California. *She also again put Mr. Culpepper on notice that if*  
22 *forced to bring a motion to dismiss, we would seek sanctions against him and his*  
23 *client as provided by law.* Attached hereto as **Exhibit D** is a true and correct copy of  
24 Ms. Rivas' May 26, 2010 email to Mr. Culpepper.

25           7. Mr. Culpepper ignored this communication as well. Indeed, except  
26 for the first call I had with him on May 10, 2010, Mr. Culpepper has completely  
27 ignored all of my efforts to contact him regarding this case. In light of  
28 Mr. Culpepper's silence, we had no choice but to file our motion to dismiss.

1           8. Surprisingly, on or about June 1, 2010, the day we filed our motion  
2 to dismiss on behalf of the University, at nearly 4:00 p.m., I received an email from  
3 Mr. Culpepper replying to my email of May 20, 2010. His email stated merely: "We  
4 will be voluntarily dismissing." A true and correct copy of this email is attached  
5 hereto as **Exhibit E**. Mr. Culpepper has never since responded to any of our  
6 communications requesting that he provide the promised dismissal, nor have plaintiffs  
7 ever made any attempt to voluntarily dismiss their claims against our clients.

8           9. After filing the motion to dismiss on behalf of the University, I  
9 learned that plaintiffs had sought to serve process on our other client, University of  
10 Illinois professor Dr. George Gollin, a named defendant in this action. On or about  
11 June 10, 2010, I again tried to reach Mr. Culpepper by telephone, and because he has  
12 no one answering his phones, I was forced to leave another message in his voicemail.  
13 I asked that he dismiss Professor Gollin under the Eleventh Amendment, and offered  
14 to send him authorities to support the dismissal. I followed up my phone call with an  
15 email to Mr. Culpepper summarizing my voicemail message and asking that he call  
16 me back. Attached hereto as **Exhibit F** is a true and correct copy of my June 10, 2010  
17 email to Mr. Culpepper.

18           10. Consistent with prior experience, Mr. Culpepper never replied to  
19 any of my calls or emails. Indeed, other than the five word message in Exhibit E (and  
20 the initial phone call on May 10), I received no communication from Mr. Culpepper  
21 and was never able to hold a discussion with him regarding any aspect of this case.  
22 Accordingly, we were forced to prepare and file a motion to dismiss as to  
23 Professor Gollin (which we did on June 22, 2010).

24           11. In the meantime, as this Court is surely aware from a glance at the  
25 docket sheet, we received numerous subsequent pleadings and filings from plaintiff  
26 Dolphin directly, as well as from Mr. Culpepper, which required our attention; and  
27 while this Court eventually, and properly, rejected most of these filings, we were still  
28 required to review and monitor them, and consider with our clients whether responses

1 were necessary.

2           12. Had Mr. Culpepper responded to our initial efforts to discuss this  
3 case with him, our clients would have been spared considerable attorney's fees and  
4 costs. Clearly, judging by Mr. Culpepper's written agreement to dismiss the  
5 University from this action, plaintiffs recognized the lawsuit was not well taken as to  
6 our clients. Our clients never should have been named in the first place; but at a  
7 minimum, after we had provided plaintiffs with the legal authority confirming the  
8 impropriety of the action as against our clients, they should have been dismissed  
9 immediately. *Plaintiffs were on notice that by refusing to dismiss our clients from this*  
10 *action, we would seek appropriate sanctions.*

11           13. Because the case had not been dismissed, the defendants were  
12 obligated to prepare for the case management conference, which required meeting and  
13 conferring for the preparation of the Rule 26 report. On or about July 28, 2010,  
14 defense counsel met telephonically for the conference and sought to conference in  
15 Mr. Culpepper to participate on behalf of the plaintiffs. Mr. Culpepper initially  
16 answered his telephone, but right after defense counsel introduced themselves and  
17 stated the reason for the call, the phone line mysteriously went dead. A subsequent  
18 effort to reconnect with Mr. Culpepper was unsuccessful (the call went directly to  
19 voicemail). Defense counsel were thus left conducting the conference by themselves  
20 and beginning the process of preparing the Rule 26 report.

21           14. The next day, on July 29, 2010, we received this Court's order  
22 dismissing this action in its entirety on jurisdictional grounds. For the Court's  
23 convenience, a true and correct copy of this order is attached hereto as **Exhibit G**.

24           15. I have reviewed our invoices and other billing records for this  
25 action. In my declaration supporting our motion for costs, I have set out the costs  
26 incurred by our clients. *In this declaration, I review the attorneys fees* incurred as a  
27 result of plaintiffs' lawsuit, which we contend was clearly frivolous, and their refusal  
28 (through counsel) to communicate with us or otherwise discuss this matter without



1 court intervention, despite acknowledging that our client should have been dismissed  
2 at the outset.

3 16. From May, 2010, when we were first retained to represent the  
4 University and Dr. Gollin, through the present, our clients have incurred **\$57,038.00** in  
5 attorney's fees defending themselves in this action. Nearly all of these fees were  
6 incurred after plaintiffs rejected and ignored our effort to discuss the case and explain  
7 why the action was legally deficient as applied to our public entity (and employee)  
8 clients. More specifically:

9 a. From early May, 2010, through May10, 2010, when I had  
10 my one and only conversation with Mr. Culpepper, our clients incurred **\$7,979** in  
11 attorney's fees. These reflected our work with our clients understanding the nature and  
12 basis for the dispute, reviewing the lengthy complaint, amended complaint, and  
13 voluminous exhibits thereto, and conducting legal research into some of the issues  
14 raised by the claims in the complaint, including 11<sup>th</sup> Amendment / sovereign immunity  
15 issues.

16 b. From May 11 to May 13, 2010, our clients incurred  
17 **\$5,885.50** in fees. This covered the work of completing our initial research into the  
18 11<sup>th</sup> Amendment defense and other defenses, research into sanctions issues, drafting  
19 our letter to plaintiffs requesting dismissal, and additional communications with our  
20 clients understanding the background issues.

21 c. From May 14, 2010, to June 1, 2010 (the date we filed our  
22 motion to dismiss on behalf of the University, and received plaintiff's counsel's terse  
23 email that plaintiff's would dismiss our client), our clients incurred **\$12,640** in  
24 attorney's fees. These fees covered our continued efforts to reach plaintiff's counsel to  
25 see if we could negotiate a dismissal and avoid further costs, and when that proved  
26 unsuccessful, our work researching, drafting, and finalizing the motion to dismiss, and  
27 associated documents, filed on behalf of the University.

1                   d.     From June 2, 2010, to June 22, 2010 (the date we filed our  
2 motion to dismiss on behalf of our client, Dr. George Gollin), our clients incurred  
3 **\$13,785.50** in attorney's fees. These fees covered our efforts to again contact  
4 plaintiff's counsel to discuss a voluntary dismissal of Dr. Gollin, and when that failed,  
5 the additional research (an individual employee of a public entity raises different  
6 jurisdictional issues than the entity itself, and hence required additional and different  
7 research) and writing necessary to prepare Dr. Gollin's motion to dismiss. (Also  
8 included is the work required to prepare and file the Reply memorandum to the  
9 University's motion to dismiss.)

10                   e.     From June 23, 2010, to July 29, 2010, the date of this  
11 Court's order dismissing the action, our clients incurred **\$2,409.50** in attorney's fees.  
12 These fees covered the work necessary to review, monitor, and where necessary  
13 address the plethora of new filings by plaintiffs and their counsel during this time  
14 period. This time period also included drafting and filing the reply memorandum to the  
15 Gollin motion to dismiss, and our work on the mandatory scheduling conference,  
16 including the conference of counsel (defense counsel only participated) and  
17 commencement of the joint statement.

18                   f.     Finally, from July 30, 2010, to the present, our clients  
19 incurred over **\$14,338.50** in attorneys fees. This work was focused primarily on the  
20 research of the appropriate vehicle for bringing a sanctions motion (which we notified  
21 plaintiff's counsel repeatedly would be coming if we were unable to discuss a  
22 voluntary dismissal), and the drafting of the papers necessary to support such a motion.

23                   17.    Our fees are based on the number of hours spent on a matter,  
24 multiplied by a billing rate. For the University and Dr. Gollin, we agreed to represent  
25 them on a discounted blended billing arrangement of \$395/hour for all attorneys,  
26 regardless of experience level. My colleague Nicole Rivas and I were the two primary  
27 attorneys working on this matter. I have 25 years of legal experience (USC Law  
28 School graduate of 1985); Ms. Rivas has 15 years of legal experience (USC Law

1 School graduate of 1995). By comparison, my standard billing rate is \$595 per hour,  
2 and Ms. Rivas' standard billing rate is \$460 per hour.

3 18. Regarding the reasonableness of these fees, part of my  
4 responsibilities as a partner is to review the billing statements. Over the last twenty  
5 years, I have reviewed thousands of bills and am very familiar with the costs normally  
6 associated with litigation of this complexity.

7 19. In addition, I am familiar with the customary fees charged by  
8 lawyers in complex litigation matters in Southern California. This knowledge is based  
9 upon my own experience in handling both hourly rate and contingent fee matters, but  
10 also my conversations and discussions with other attorneys over the years. In my  
11 opinion, based upon my knowledge of fees charged in Southern California, and in  
12 particular, the Los Angeles area, the blended rate we charged in this matter is  
13 reasonable and below those rates charged by lawyers with similar experience, skills  
14 and reputation at similar firms in the downtown Los Angeles legal community.

15 20. Attached hereto as **Exhibit H** are true and correct copies of the  
16 relevant pages of the 2009 "RBZ Law Firm Survey Results; Southern California; Law  
17 Firm Compensation, Billing Rate and Benefits Survey." According to Section II,  
18 Page 1, of the Survey, Alston & Bird is a Size H firm ("151 or more attorneys").  
19 According to Section III, Page 4, equity partners like myself at Size H firms in  
20 Southern California generally charge between \$527 and \$695 per hour, with the  
21 average being \$610. For Ms. Rivas, the closest comparison in the Survey is for  
22 "Career Associates," which show average rates substantially higher than the \$395  
23 being charged here. In all, the survey confirms that our billing rates are below those  
24 generally charged by similar firms in the community.

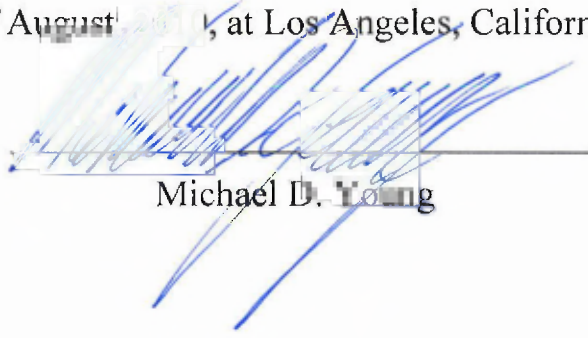
25 21. Pursuant to Local Rule 7-3, my colleague Nicole Rivas called  
26 Mr. Culpepper on Friday, August 6, 2010, to discuss the substance of this motion, and  
27 the concurrently filed motion for costs. Ms. Rivas informed me that she left a  
28 message on Mr. Culpepper's voicemail setting forth the nature of the call, describing



1 our intent to file these motions, and requesting a call back. Having heard nothing  
2 from him, Ms. Rivas called Mr. Culpepper again on Wednesday, August 11, 2010,  
3 and left a similar message. She followed that up with an email, on which I was  
4 copied. A true and correct copy of that email is attached hereto as **Exhibit I**.

5 I declare under penalty of perjury under the laws of the United States and  
6 the State of California that the foregoing is true and correct of my personal  
7 knowledge.

8 Executed on this 12<sup>th</sup> day of August 2010, at Los Angeles, California.

9  
10  
11   
12 Michael D. Young  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

**Olaques, Laura**

---

**From:** Young, Mike  
**Sent:** Monday, May 10, 2010 1:16 PM  
**To:** 'thaddeusfsc@gmail.com'; 'culpepper@alumni.pitt.edu'  
**Subject:** St. Luke School of Medicine v. Republic of Liberia

Thaddeus, thank you for speaking with me today. As I mentioned, we represent the University of Illinois in the captioned matter. This will confirm our agreement today that rather than dispute the effectiveness of service of process over the University of Illinois, the University has agreed to accept service with the understanding that the University's last day to respond to the complaint is 21 days from today, or June 1, 2010 (21 days from today is May 31, but that's a Memorial Day holiday, so we moved the deadline one day further).

As we discussed, I will send you a letter shortly formally requesting your clients to dismiss the University of Illinois on sovereign immunity grounds, among others.

Please feel free to call if you would like to discuss this.

Regards,

**-MIKE-**

**Michael D. Young**

Alston + Bird

333 S. Hope Street, 16th Floor

Los Angeles, CA 90071

Direct: (213) 576-1135

Office: (213) 576-1000

mike.young@alston.com

[www.alston.com](http://www.alston.com)

*Please visit our California Labor and Employment Blog  
Who's The Boss?*

<http://www.alston.com/laborandemploymentblog>

## EXHIBIT B

**Olagues, Laura**

---

**From:** Olagues, Laura  
**Sent:** Thursday, May 13, 2010 5:36 PM  
**To:** thaddeusfsc@gmail.com; culpepper@alumni.pitt.edu  
**Cc:** Young, Mike  
**Subject:** St. Luke School of Medicine v. Republic of Liberia, et al.

**Attachments:** 5-13-10 Ltr to Atty. Culpepper.pdf

Dear Mr. Culpepper,

Attached please find a PDF copy of Mr. Young's letter of this date regarding the above referenced matter.

Please feel free to email or call me if I may be of further assistance.

Very truly yours,

Laura Olagues, Assistant to  
Michael D. Young  
Alston & Bird LLP  
333 South Hope Street, Sixteenth Floor  
Los Angeles, California 90071  
Direct: (213) 576-1151  
Facsimile: (213) 576-1100  
Email: laura.olagues@alston.com



5-13-10 Ltr to Atty.  
Culpepper...



## ALSTON & BIRD LLP

333 South Hope Street  
16th Floor  
Los Angeles, CA 90071-1410

213-576-1000  
Fax: 213-576-1100  
www.alston.com

Michael D. Young  
Email: [mike.young@alston.com](mailto:mike.young@alston.com)

VIA UPS AND EMAIL  
[thaddeusfsc@gmail.com](mailto:thaddeusfsc@gmail.com)  
[culpepper@alumni.pitt.edu](mailto:culpepper@alumni.pitt.edu)

May 13, 2010

Thaddeus J. Culpepper  
Culpepper Law Groupe  
556 South Fair Oaks Avenue  
Suite 101 - No. 302  
Pasadena, California 91105

Re: St. Luke School of Medicine, et al., v. Republic of Liberia, et al.  
United States District Court Case No. CV-10-1791 RGK (SHx)

Dear Mr. Culpepper:

Please accept this as our formal request that you immediately dismiss the University of Illinois from the referenced action.

As I mentioned in our phone call this week, it is without exception that the principle of sovereign immunity unconditionally bars this action as against the University of Illinois. I would urge you to take a look at *Regents of the University of California v. John Doe*, 519 U.S. 425, 429 (1996), and *Eaglesmith v. Ward*, 73 F.3d 857, 859-860 (9th Cir. 1995), where the U.S. Supreme Court and the Ninth Circuit both confirmed that states are immune from private damages actions in federal court under the Eleventh Amendment to the U.S. Constitution.

As those courts remind us, the Eleventh Amendment provides in pertinent part that the "judicial power of the United States shall *not* be construed to extend to any suit in law or equity . . . *against one of the United States by Citizens*

Thaddeus J. Culpepper  
May 13, 2010  
Page 2

*of another State, or by Citizens . . . of any Foreign State.*" (U.S. Const. Amend. 11. (emphasis added).)

As you probably know, this constitutional sovereign immunity applies to and protects not just the state itself, but the state's public university systems. This was made clear by the U.S. Supreme Court when it noted that "the reference to actions 'against one of the United States' encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." *Regents of the University of California*, 519 U.S. 429.

Courts have repeatedly held that state universities and their employees are state instrumentalities entitled to immunity under the Eleventh Amendment, and thus fall outside of the reach of federal jurisdiction. *Id.* at 431 (reversing the 9<sup>th</sup> Cir., and holding that the *University of California* was immune from a breach of contract claim in federal court under the Eleventh Amendment); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1442-1443 (9<sup>th</sup> Cir. 1989) (holding that UCLA was an instrumentality of the state for Eleventh Amendment purposes, and thus plaintiff's 1983 claim against the university was properly dismissed on sovereign immunity grounds); *Lewis v. Midwestern State University*, 837 F.2d 197, 199 (5<sup>th</sup> Cir. 1988) (upholding the district court's dismissal of an action on the basis that the university was entitled to immunity under the Eleventh Amendment).

In fact, lest there be any doubt about this, the Seventh Circuit has specifically determined that *the University of Illinois* is an instrumentality of the state of Illinois, and thus is entitled to the protections of the Eleventh Amendment. *See, e.g., Cannon v. University of Health Sciences/The Chicago Medical School*, 710 F.2d 351, 356-357 (7<sup>th</sup> Cir. 1983).

In short, plaintiff simply cannot maintain this action against the University of Illinois, an instrumentality of the state, under the express provisions of the Eleventh Amendment and controlling authority interpreting that amendment.

We are aware of no exceptions to this straightforward constitutional bar to the claims you have asserted on behalf of your client against the University of Illinois in this action. Nor is there any discretion vested in the federal court. In the face of a motion to dismiss, it must dismiss the action as against the state instrumentality.

Thaddeus J. Culpepper  
May 13, 2010  
Page 3

*It is for this reason that we believe that you and your client would be subject to monetary sanctions if your client refuses to immediately dismiss the University from this action.*

With respect to sanctions, we draw your attention to the Rule 11 standard as expressed by our trial judge, Hon. Gary Klausner, in a recent case:

“Sanctions under Rule 11 of the Federal Rules of Civil Procedure are intended to streamline litigation, *deter baseless filings*, and prevent abusive or dilatory tactics. (Citation.) Pursuant to Rule 11, the Court may impose sanctions when a pleading, motion, or other paper is *either frivolous such that it is not warranted by existing law*, or is filed for an ‘improper purpose.’ (Citations.) *Sanctionable conduct includes filing complaints that are known to be lacking in subject matter jurisdiction*, as well as repeatedly filing lawsuits that assert claims previously dismissed in other cases.”

*Barahona v. Orkin*, 2008 U.S. Dist. LEXIS 89494 (USDC CD CA 2008) (Klausner) (emphasis added).

Moreover, Judge Klausner is not reluctant to issue sanctions in appropriate cases, as confirmed in *Thelma v. Spirtos*, 2006 U.S. App. LEXIS 5259 (9<sup>th</sup> Cir. 2006) (affirming Judge Klausner’s issuance of Rule 11 Sanctions).

Federal courts have not hesitated to impose sanctions *on counsel as well* where a plaintiff brings an action against a party that is otherwise immune from suit under the Eleventh Amendment. Please take a look at *Hernandez v. Joliet Police Department*, 197 F.3d 256 (7<sup>th</sup> Cir. 1999) where the court imposed Rule 11 sanctions against the *plaintiff’s attorney* when he refused to dismiss an instrumentality of the state that was protected from suit by the Eleventh Amendment. Along the same lines, take a look at *Nicarry v. Cannaday*, 2006 U.S. Dist. Lexis 95074 (USDC MD FL 2006) (sanctions against plaintiff were appropriate where “a reasonable inquiry by Plaintiff’s counsel would have revealed that his claim against the Department was objectively frivolous as it was barred by the Eleventh Amendment.... Because Plaintiff’s attorney failed to make a reasonable inquiry into the fairly straightforward and well-established legal issues surrounding this case, Rule 11 sanctions are appropriate.”)



Thaddeus J. Culpepper  
May 13, 2010  
Page 4

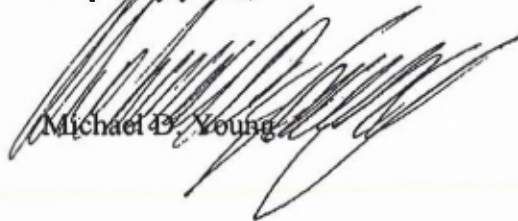
Sanctions have also been imposed against plaintiff's counsel under 28 U.S.C. Section 1927. See, for instance, the Second Circuit's decision in *Gollomp v. Spitzer*, 568 F.3d 355 (2<sup>nd</sup> Cir. 2009) where the Court affirmed the imposition of sanctions against plaintiff's attorneys Section 1927, for wrongfully prosecuting an action against a state and its officials in federal court in violation of the sovereign immunity provision of the Eleventh Amendment. In that case, the plaintiff filed a 61 page complaint with 493 numbered paragraphs (yours weighs in at 64 pages, but only a mere 211 numbered paragraphs). Granted, the facts in that case were a bit more egregious than what we have seen so far in this case, the point is still well taken – sanctions can be imposed against the client or counsel for persisting in asserting claims clearly barred by sovereign immunity, especially where “defendants [as we are doing here] promptly warned plaintiff's counsel that they intended to file a Rule 11 motion if the causes of action barred by the Eleventh Amendment were not withdrawn,” and where the claims “are incomprehensible – legally or otherwise.” *Id.* at 371. (Without going into it here, we believe the claims you have asserted on behalf of your client will fit this description.)

*In short, for the reasons set forth above, we ask that your client immediately dismiss all claims against the University. The University should not have been sued in the first place, and it clearly should not be forced to incur the legal fess to file a motion to dismiss.*

Should you choose to decline our request, we will bring a motion to dismiss, and will seek both Rule 11 and Section 1927 sanctions against both your client and the Culpepper Law Groupe.

I would be pleased to discuss this with you further if you would like. You can call me at the number on the letterhead. Otherwise, I look forward to your response to our request by May 17.

Very truly yours,



Michael D. Young

MDY/lo

ADMIN/20618343v2

## EXHIBIT C



**Olagues, Laura**

---

**From:** Young, Mike  
**Sent:** Thursday, May 20, 2010 2:04 PM  
**To:** 'culpepper@alumni.pitt.edu'; 'thaddeusfsc@gmail.com'  
**Cc:** Rivas, Nicole  
**Subject:** St. Luke School of Medicine v. Republic of Liberia

Thaddeus, I left you a voicemail message regarding my letter to you of seeking dismissal of the University of Illinois on sovereign immunity grounds. For your convenience, another copy is attached.

Could you please let me know whether you will voluntarily dismiss the University at this time? We will need to prepare our motion to dismiss and for sanctions soon if we don't hear from you, and this seems like an unnecessary expense given the clear impropriety of adding the University to this federal action.

Please get back to me today if at all possible.

Regards,

**-MIKE-**

**Michael D. Young**

Alston + Bird

333 S. Hope Street, 16th Floor

Los Angeles, CA 90071

Direct: (213) 576-1135

Office: (213) 576-1000

mike.young@alston.com

[www.alston.com](http://www.alston.com)

*Please visit our California Labor and Employment Blog*

*Who's The Boss?*

<http://www.alston.com/laborandemploymentblog>

## EXHIBIT D

**Olagues, Laura**

---

**From:** Rivas, Nicole  
**Sent:** Wednesday, May 26, 2010 3:00 PM  
**To:** thaddeusfsc@gmail.com; culpepper@alumni.pitt.edu  
**Cc:** Young, Mike  
**Subject:** St. Luke School of Medicine et al. v. University of Illinois

Dear Mr. Culpepper:

Our firm has tried repeatedly to reach you by letter, e-mail and telephone, without success, to discuss the voluntary dismissal of the University of Illinois from the above-entitled action. As indicated in our prior correspondence, the case law on this point is crystal clear: the University of Illinois, as an agent of the State of Illinois, may not be sued in federal court for the types of claims that your clients have asserted. Accordingly, such action is completely baseless, and should be dismissed. If you have any authority to the contrary, please provide it to us as soon as possible for our consideration.

If you continue to refuse to dismiss this action, absent some authority to support your position, we will move both to dismiss the action as well as for sanctions against you and your clients under Rule 11. We sincerely hope that such course of action will not be necessary and that you will see the wisdom of dismissing this action without the need for further litigation.

**Nicole C. Rivas**

Alston & Bird LLP  
333 S. Hope, 16th Floor  
Los Angeles, California 90071  
nicole.rivas@alston.com  
213 576-1021  
213 576-1100 fax

6/1/2010

# EXHIBIT E

---

**From:** Thaddeus J. Culpepper [thaddeusfsc@gmail.com]

**Sent:** Tuesday, June 01, 2010 3:53 PM

**To:** Young, Mike

**Subject:** Re: St. Luke School of Medicine v. Republic of Liberia

**We will be voluntarily dismissing**

On Thu, May 20, 2010 at 2:03 PM, <Mike.Young@alston.com> wrote:

Thaddeus, I left you a voicemail message regarding my letter to you of seeking dismissal of the University of Illinois on sovereign immunity grounds. For your convenience, another copy is attached.

Could you please let me know whether you will voluntarily dismiss the University at this time? We will need to prepare our motion to dismiss and for sanctions soon if we don't hear from you, and this seems like an unnecessary expense given the clear impropriety of adding the University to this federal action.

Please get back to me today if at all possible.

Regards,

**-MIKE-**

**Michael D. Young**

Alston + Bird

333 S. Hope Street, 16th Floor

Los Angeles, CA 90071

Direct: (213) 576-1135

Office: (213) 576-1000

[mike.young@alston.com](mailto:mike.young@alston.com)

[www.alston.com](http://www.alston.com)

*Please visit our California Labor and Employment Blog*

*Who's The Boss?*

<http://www.alston.com/laborandemploymentblog>

\*\*\*\*\* IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

NOTICE: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (404-881-7000) or by electronic mail ([postmaster@alston.com](mailto:postmaster@alston.com)), and delete this message and all copies and backups thereof. Thank you.

6/22/2010

23



## EXHIBIT F

---

**From:** Young, Mike  
**Sent:** Thursday, June 10, 2010 10:44 AM  
**To:** 'thaddeusfsc@gmail.com'; 'culpepper@alumni.pitt.edu'  
**Subject:** RE: St. Luke School of Medicine v. Republic of Liberia

Thaddeus: Per my voicemail message to you this morning, please give me a call to discuss this case. I appreciate that you are now agreeing to dismiss the University of Illinois from the action – I wish you would have done so pursuant to my earlier requests and prior to our having to file the motion to dismiss as then we would have agreed to waive costs and sanctions. Nonetheless, better late than never. Please let me know when we can expect to see the dismissal. In the meantime, I assume you do not mind if we notify the court that you will not be opposing our motion.

In my voicemail message, I also asked that you dismiss Dr. Gollin from the action. Accepting your allegations in the complaint that Dr. Gollin was acting in his role as an employee of the University, he too would be covered by the sovereign immunity of the Eleventh Amendment. We can provide you with legal authority if you would like, but I have no doubt that by this time you are fully aware of the scope of Eleventh Amendment immunity.

Could you please respond by either a phone call or email and let me know that you will dismiss Dr. Gollin from this action? I would like to have your response by Monday so we can avoid preparing yet another motion to dismiss.

I look forward to your prompt reply. Regards,

**-MIKE-**

**Michael D. Young**  
Alston + Bird  
333 S. Hope Street, 16th Floor  
Los Angeles, CA 90071  
Direct: (213) 576-1135  
Office: (213) 576-1000  
mike.young@alston.com  
www.alston.com

*Please visit our California Labor and Employment Blog  
Who's The Boss?  
<http://www.alston.com/laborandemploymentblog>*

---

**From:** Thaddeus J. Culpepper [mailto:thaddeusfsc@gmail.com]  
**Sent:** Tuesday, June 01, 2010 3:53 PM  
**To:** Young, Mike  
**Subject:** Re: St. Luke School of Medicine v. Republic of Liberia

We will be voluntarily dismissing

On Thu, May 20, 2010 at 2:03 PM, <Mike.Young@alston.com> wrote:

Thaddeus, I left you a voicemail message regarding my letter to you of seeking dismissal of the University of Illinois on sovereign immunity grounds. For your convenience, another copy is attached.

Could you please let me know whether you will voluntarily dismiss the University at this time? We will need to

6/22/2010

prepare our motion to dismiss and for sanctions soon if we don't hear from you, and this seems like an unnecessary expense given the clear impropriety of adding the University to this federal action.

Please get back to me today if at all possible.

Regards,

**--MIKE--**

**Michael D. Young**

Alston + Bird

333 S. Hope Street, 16th Floor

Los Angeles, CA 90071

Direct: (213) 576-1135

Office: (213) 576-1000

[mike.young@alston.com](mailto:mike.young@alston.com)

[www.alston.com](http://www.alston.com)

*Please visit our California Labor and Employment Blog*

*Who's The Boss?*

<http://www.alston.com/laborandemploymentblog>

\*\*\*\*\* IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

NOTICE: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (404-881-7000) or by electronic mail ([postmaster@alston.com](mailto:postmaster@alston.com)), and delete this message and all copies and backups thereof. Thank you.

6/22/2010

# EXHIBIT G

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-01791 RGK (SHx)

Date July 29, 2010

Title *St. Luke School of Medicine, et al. v. Republic of Liberia, et al.*

Present: The  
Honorable

R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings:

(IN CHAMBERS) Order re: Order Dismissing Complaint for Failure to  
Establish Subject Matter Jurisdiction.

Plaintiff has failed to properly respond to the Court's Order to Show Cause why this case should not be dismissed for lack of subject matter jurisdiction. Plaintiff's attorney failed to file any response to the Order to Show Cause. Plaintiff filed a document himself; yet since Plaintiff is not counsel of record, the document was rejected. In any event, Plaintiff's filings would not have saved the case from being dismissed. Plaintiff's arguments regarding federal subject matter jurisdiction are without merit. And Plaintiff's argument based on diversity is based on the mistaken notion that country of citizenship (in contrast to the State where domestic parties reside) is taken into account for diversity jurisdiction analysis. In particular, Plaintiff has not clarified the state of citizenship for parties that are United States citizens (on either side).

Since Plaintiff has failed to properly respond to the Court's Order to Show Cause, and since Plaintiff's arguments do not establish subject matter jurisdiction, the Court **DISMISSES** this action in its entirety for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

Initials of Preparer slw



# EXHIBIT H

The logo for rbz, with the letters in a bold, lowercase, sans-serif font. A registered trademark symbol (®) is located to the upper right of the 'z'.

2009

## LAW FIRM SURVEY RESULTS

### SOUTHERN CALIFORNIA

#### Law Firm Compensation, Billing Rate and Benefits Survey

RBZ LAW FIRM SERVICES GROUP

30

## RBZ 2009 Southern California Law Firm Compensation, Billing Rate and Benefits Survey

## General 1

## Firm Count by size

Size A	10
Size B	33
Size C	31
Size D	19
Size E	20
Size F	10
Size G	19
Size H	10
Total	152

## General 2

## Firm Count by location

Location 1	49
Location 2	39
Location 3	18
Location 4	10
Location 5	30
Location 6	6
Total	152

## General 3

## Headquarters or branch

Headquarters	100
Branch	52
Total	152

## Code Firm Size

## Code

## Location

A	1 - 7 attorneys	1	Downtown, Los Angeles and mid-Wilshire area
B	8 - 15 attorneys	2	Beverly Hills, Century City, Westwood and related areas
C	16 - 25 attorneys	3	Santa Monica, West Los Angeles, Marina del Rey and related areas
D	26 - 35 attorneys	4	Pasadena, Glendale, Burbank, Universal City, San Fernando Valley and related areas
E	36 - 50 attorneys	5	Orange County
F	51 - 75 attorneys	6	Other locations
G	76 - 150 attorneys		
- H	151 or more attorneys		

**RBZ 2009 Southern California Law Firm Compensation, Billing Rate and Benefits Survey****1 - Equity Partners/Shareholders****Billing Rates**

	<u>Firms</u>	<u>Incumbents</u>	<u>Average</u>	<u>10th Percentile</u>	<u>25th Percentile</u>	<u>Median</u>	<u>75th Percentile</u>	<u>90th Percentile</u>
All Firms	94	899	476	300	395	475	550	631
Size A	9	17	438	262	300	513	550	604
Size B	26	116	424	290	348	413	484	575
Size C	23	152	434	296	350	425	493	600
Size D	12	105	457	268	395	465	540	595
Size E	11	168	450	350	394	450	510	552
Size F	4	91	598	235	525	620	740	795
Size G	7	207	489	375	425	475	550	650
Size H	2	43	610	527	560	595	670	695
Location 1	29	310	478	340	400	475	550	625
Location 2	22	186	568	375	475	553	675	773
Location 3	11	113	483	300	425	495	570	629
Location 4	8	71	458	340	400	460	525	595
Location 5	18	171	416	245	350	425	490	550
Location 6	6	48	336	191	273	350	395	450
Headquarters office	74	727	452	300	383	450	525	600
Branch office	20	172	576	426	488	560	664	754

**1 - Equity Partners/Shareholders****Billable Hours**

	<u>Firms</u>	<u>Incumbents</u>	<u>Average</u>	<u>10th Percentile</u>	<u>25th Percentile</u>	<u>Median</u>	<u>75th Percentile</u>	<u>90th Percentile</u>
All Firms	95	915	1,730	1,205	1,448	1,712	1,984	2,204
Size A	10	17	1,624	1,317	1,416	1,573	1,852	2,009
Size B	26	106	1,591	1,081	1,291	1,568	1,895	2,115
Size C	23	149	1,660	1,189	1,373	1,618	1,950	2,188
Size D	12	103	1,842	1,225	1,432	1,811	2,128	2,453
Size E	10	147	1,667	1,186	1,443	1,671	1,854	2,105
Size F	5	102	1,807	1,426	1,592	1,777	2,003	2,260
Size G	7	218	1,775	1,260	1,513	1,797	2,006	2,179
Size H	2	73	1,828	1,230	1,621	1,854	2,014	2,284
Location 1	30	336	1,748	1,176	1,408	1,720	2,007	2,313
Location 2	21	175	1,682	1,227	1,438	1,690	1,910	2,124
Location 3	12	112	1,679	1,222	1,430	1,682	1,921	2,119
Location 4	9	69	1,628	1,222	1,388	1,604	1,787	2,080
Location 5	18	177	1,786	1,244	1,535	1,806	2,035	2,234
Location 6	5	46	1,843	1,401	1,680	1,866	2,050	2,290
Headquarters office	77	779	1,730	1,211	1,450	1,712	1,978	2,207
Branch office	18	136	1,733	1,176	1,437	1,714	2,006	2,192

## RBZ 2009 Southern California Law Firm Compensation, Billing Rate and Benefits Survey

## 4 - Career Associates

## Billing rates by class year - all firms

	Firms	Incumbents	Average	10th Percentile	25th Percentile	Median	75th Percentile	90th Percentile
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	1	1	*	*	*	*	*	*
2005	1	1	*	*	*	*	*	*
2004	2	3	237	*	*	220	*	*
2003	1	1	*	*	*	*	*	*
2002	2	2	215	*	*	*	*	*
2001	1	2	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	3	5	565	356	500	675	695	695
1998	47	159	422	225	295	435	525	596
1997 and earlier	54	12	649	492	668	675	718	785

## 4 - Career Associates

## Billing rates by class year-firm size A

	Firms	Incumbents	Average	10th Percentile	25th Percentile	Median	75th Percentile	90th Percentile
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	*	*	*	*	*	*	*	*
2005	*	*	*	*	*	*	*	*
2004	*	*	*	*	*	*	*	*
2003	*	*	*	*	*	*	*	*
2002	*	*	*	*	*	*	*	*
2001	*	*	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	*	*	*	*	*	*	*	*
1998	3	3	324	*	*	350	*	*
1997 and earlier	*	*	*	*	*	*	*	*

## 4 - Career Associates

## Billing rates by class year-firm size B

	Firms	Incumbents	Average	10th Percentile	25th Percentile	Median	75th Percentile	90th Percentile
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	*	*	*	*	*	*	*	*
2005	*	*	*	*	*	*	*	*
2004	*	*	*	*	*	*	*	*
2003	*	*	*	*	*	*	*	*
2002	*	*	*	*	*	*	*	*
2001	*	*	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	*	*	*	*	*	*	*	*
1998	6	8	423	369	423	443	450	458
1997 and earlier	1	1	*	*	*	*	*	*



## RBZ 2009 Southern California Law Firm Compensation, Billing Rate and Benefits Survey

## 4 - Career Associates

## Billing rates by class year-firm size F

	<u>Firms</u>	<u>Incumbents</u>	<u>Average</u>	<u>10th Percentile</u>	<u>25th Percentile</u>	<u>Median</u>	<u>75th Percentile</u>	<u>90th Percentile</u>
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	*	*	*	*	*	*	*	*
2005	*	*	*	*	*	*	*	*
2004	*	*	*	*	*	*	*	*
2003	*	*	*	*	*	*	*	*
2002	*	*	*	*	*	*	*	*
2001	*	*	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	*	*	*	*	*	*	*	*
1998	2	20	423	213	224	525	595	675
1997 and earlier	*	*	*	*	*	*	*	*

## 4 - Career Associates

## Billing rates by class year-firm size G

	<u>Firms</u>	<u>Incumbents</u>	<u>Average</u>	<u>10th Percentile</u>	<u>25th Percentile</u>	<u>Median</u>	<u>75th Percentile</u>	<u>90th Percentile</u>
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	*	*	*	*	*	*	*	*
2005	*	*	*	*	*	*	*	*
2004	*	*	*	*	*	*	*	*
2003	1	1	*	*	*	*	*	*
2002	*	*	*	*	*	*	*	*
2001	*	*	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	1	1	*	*	*	*	*	*
1998	7	31	523	430	470	505	550	680
1997 and earlier	*	*	*	*	*	*	*	*

## 4 - Career Associates

## Billing rates by class year-firm size H

	<u>Firms</u>	<u>Incumbents</u>	<u>Average</u>	<u>10th Percentile</u>	<u>25th Percentile</u>	<u>Median</u>	<u>75th Percentile</u>	<u>90th Percentile</u>
2008	*	*	*	*	*	*	*	*
2007	*	*	*	*	*	*	*	*
2006	1	1	*	*	*	*	*	*
2005	*	*	*	*	*	*	*	*
2004	1	2	*	*	*	*	*	*
2003	*	*	*	*	*	*	*	*
2002	1	1	*	*	*	*	*	*
2001	1	2	*	*	*	*	*	*
2000	*	*	*	*	*	*	*	*
1999	2	4	581	385	*	685	*	695
1998	2	20	286	245	250	260	288	316
1997 and earlier	1	10	*	*	*	*	*	*



# EXHIBIT I

**Young, Mike**

---

**From:** Rivas, Nicole  
**Sent:** Wednesday, August 11, 2010 2:53 PM  
**To:** thaddeusfsc@gmail.com; culpepper@alumni.pitt.edu  
**Cc:** Young, Mike  
**Subject:** St. Luke Medical School

Dear Mr. Culpepper:

This e-mail is to follow-up the two voicemail messages I left for you last week and earlier today. As required by Local Rule 7-3, we would like to meet and confer with you regarding our proposed motions for costs under 28 U.S.C. § 1919 and for sanctions under 28 U.S.C. § 1927 and the Court's inherent power. Please contact me by no later than the end of the day if you desire to attempt to informally resolve this matter without having to involve the Court.

**Nicole C. Rivas**

Alston & Bird LLP  
333 S. Hope, 16th Floor  
Los Angeles, California 90071  
nicole.rivas@alston.com  
213 576-1021  
213 576-1100 fax